IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 895 OF 1990

Ramesh Chander Abbi)
Adult Indian Inhabitant)
residing at D-2, Aaram Society,)
Vakola, Santacruz (E),)
Bombay 400 055.) ...Appelant
(Original Accused)

V/s.

State of Maharashtra,)
(at the instance of CBI, Bombay.) ...Respondent

Mr.Ganesh Gole for the Appellant.
Mr.J.C. Satpute with Mr.Ejaz Khan, Advocates for Customs.
Mr.A.S. Shitole, APP for State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 15, 2005.

ORAL JUDGMENT :-

. The appellant is challenging the Judgment and Order passed by the Special Judge, Greater Bombay in Special Case No.23 of 1978. By the said Judgment and Order dated 23rd October, 1990, the Special Judge convicted the appellant for the offence punishable under Section 5(1)(e) read with Section 5(2) for the Prevention of Corruption Act, 1947 and sentenced him to

suffer Rigorous Imprisonment for four months and also imposed fine of Rs.5,000/- and in default of payment of fine, to undergo further Rigorous Imprisonment for one month. An undertaking of accused is also recorded that he would deposit the sum of Rs.34,466.95 within 90 days from the date of the Judgment which was the amount found to be in excess of the legitimate income of the accused.

. The prosecution case in brief is as under :-

2. The appellant initially was working in a private firm Bombay Dying and Manufacturing Company Limited from 21.4.64 to 10.2.65. Thereafter, the appellant joined the Textile Corporation of India and was posted at Ahmedabad, Bombay and Coimbatore. The family of the accused consisted of his wife, one son and daughter and his total income during the check period was Rs.1,04,151.18. According to the prosecution, the value of the assets held by the accused was Rs.1,93,751.52ps. and his total expenditure during the check period was found to be Rs.97,692.03 and the expected sealing was to the tune of Rs.6,459.15 and therefore, the accused hold

assets which were disproportionate to the known sources of income to the extent of Rs.1,87,292.37. The defence of the accused was that his wife also had substantial source of income and many of the assets were explained satisfactorily in view of the income of his wife and therefore, there was no substance in the case of the prosecution. The accused also challenged the veracity of the evidence regarding his income, expenditure and assets. The prosecution examined 46 witnesses and also brought on record number of documents and exhibits. The accused also examined 9 witnesses and brought on record number of documents. The trial Court held that the sanction which was accorded was proper and valid and further held that an amount of Rs.34,466/- was found to be disproportionate to the known sources of income. The trial Court further did not accept the contention of the accused that the trial had been vitiated on account of the investigation being carried out by an officer who was below the rank of Superintendent of Police. The trial Court further held that the accused was a public servant in view of Section 16 of the Textile Corporation Act. The trial Court further proceeded to analyse the

evidence of the prosecution witnesses and took into consideration the individual items and either accepted or discarded the evidence by giving its own reasons.

3. I have heard learned Counsel appearing on behalf of the appellant and learned APP appearing on behalf of the State at length. They have taken me through the Judgment and Order of the trial Court as also to voluminous oral evidence as also the documentary evidence which is brought on record by the prosecution as also the defence. The learned Counsel appearing on behalf of the appellant submitted that the trial Court had not taken into consideration evidence of certain key witnesses which were examined by the prosecution and had discarded the admissions which were given by the witnesses which satisfactorily explained the various amounts and assets which were in the name of the appellant and his family. He submitted that the trial Court had erred in discarding this evidence particularly when this evidence had been brought on record by the prosecution and more particularly when part of their evidence which was in support of the prosecution had

been accepted while part of the evidence which was in favour of the accused had been discarded by the trial Court. He submitted that therefore even without going through the evidence which was adduced by the defence even if the evidence of these witnesses which were examined by the prosecution had been properly assessed, in that case the trial Court need not have come to the conclusion that the accused had assets of Rs.34,000/- in excess of his own sources of income. He further submitted that the prosecution itself was vitiated as the investigation has been carried out by a person below the rank of Superintendent of Police as envisaged under Section 5(1) of the Prevention of Corruption Act and as such the entire investigation has been vitiated and as a result, the accused was liable to be acquitted. He submitted that there was no documental record to indicate that the Investigating Officer had the necessary power to investigate this offence. He submitted that the salutary purpose for incorporating the said condition with respect to offences which are punishable under Section 5(1)(e) read with 5(2) and of imposing aforesaid condition was to ensure that an

officer who is below that rank is not given discretion to investigate against the high ranking officers. He submitted that the trial Court had clearly erred on relying on a copy of a letter which did not bear the authentic signature of the competent authority authorising the Investigating Officer from conducting the investigation. He invited my attention to the relevant documentary evidence in the finding of the trial Court order.

4. He further submitted that the Supreme Court in the case of **M.Krishna Reddy V/s. State Deputy Superintendent of Police, Hydrabad reported in (1992) 4 SCC 45** has sounded a word of caution and had held that in cases where the check period is over a period of 15 years then even if the accused is not in a position to satisfy the explained assets upto 20%, then in such case the accused was entitled to be given the benefit of doubt. Learned Counsel appearing on behalf of the appellant has submitted a chart of the witnesses which has not been considered by the trial Court or having considered the evidence which they had given in favour

of the accused had discarded the said evidence by giving reasons which were based on erroneous presumption.

5. Learned Counsel appearing on behalf of the respondent vehemently opposed the submission which was made by the learned Counsel appearing on behalf of the appellant. He submitted that the trial court had rightly taken into consideration the copy of the document which indicated that the Investigating Officer was duly authorised to make the investigation as per the provisions of the Prevention of Corruption Act. He submitted that even if there may be some deficiency in the investigation of the offence, that by itself would not vitiate the prosecution case as long as the accused does not establish that prejudice has been caused to him as a result investigation being carried out by a person below the rank of DYSP. The learned Counsel for the respondent further submitted that the trial Court had meticulously taken into consideration each item of income and expenditure which had been brought on record by the prosecution and had correctly discarded the statement made by the prosecution witnesses which were

in favour of the accused by giving cogent reasons as to why the said admission need not be taken into consideration. He submitted that if the trial Court had after appreciating the evidence on record had arrived at a particular conclusion after giving cogent reasons, this Court may not interfere within the said findings which were recorded by the trial Court. He further submitted that if the view taken by the trial Court was plausible view, then there was no reason to interfere with the said findings.

6. I have given anxious consideration to the submission made by the learned Counsel appearing on behalf of the appellant and submission made by the learned APP appearing on behalf of the respondent. In the present case, the appellant accused was working with the Textile Corporation and the check period was between February 1965 to May 1977. The check period, therefore, spans over more than a decade. The accused had offered his explanation and had disclosed all the assets and liabilities during this period of twelve years. It was alleged by the prosecution that the accused had in the

name of himself and his family the assets worth Rs.1,87,000/- approximately which were disproportionate to the known sources of his income. After the evidence was adduced by both the parties, the trial Court accepted some of the explanations offered by the appellant-accused and came to the conclusion that an amount of Rs.34,466.95 was disproportionate to the known sources of income. Thus taking into consideration the charge which was levelled against the accused and the actual amount is the trial Court found was disproportionate comes to less than 1/5th of what was charged against him, in other words, what was found to be disproportionate was less than 20% of the actual amount alleged to be disproportionate.

7. The prosecution has examined as many as 46 witnesses in support of its case whereas the appellant examined 9 witnesses. It would be relevant to analysis and examine in brief the various witnesses which are examined by the prosecution. PW 1 - Nirmalendusur has stated she knew the accused. He was working as an Inspector in the Textile Committee and was a public

servant under Section 16 of the Act. This witness has not been examined by the defence. PW 2 is the panch witness Atmaram Kalekar who was present when the search of Locker Nos.184 and 264 of the State Bank of India was taken. The wife of the accused was also present. Panchanama is at Exhibit 27. PW - P.Narayan is the Account Officer who proved Exhibit 37 which was prepared by Shetty, his predecessor. PW 4 - Jagannath Laxman Bamane is the panch who was present when the house search of the accused was taken and has proved panchanama at Exhibit 49. PW 5 - Narendra Saigal was a partner in Expo Enterprises who claimed to have been given a loan of Rs.5,000/- to Shashi Pathak. PW 6 is Inder Deva Sanghani who was a partner in Diamond Arts where the wife of the accused was also a partner. PW 6 had contributed Rs.34,000/- and the wife of the accused had contributed Rs.37,300/- which was accepted as Capital Account. PW 7 - Raju S. Jatiyani, Assistant Commercial Officer in BSES who proved the electricity bills during the check period. PW 8 - Namdeo Gawade was Asstt.Rationing Officer. PW 9 - Shankar Tanapure who proved T.V. License which was issued in favour of the

accused. PW 10 - Jayantilal Biscuitwala, the shop owner who stated that Philips radio was sold for Rs.735/- on 23.5.70. PW 11 - Hosmar K. Shenoy was Asstt.Manager, Syndicate Branch stating that Ramesh deposited Rs.3,400/- and took D.D. in favour of the accused. PW 12 - Virendra Gulati has deposed that accused purchased a fridge for him for Rs.2,357/-. PW 13 - Rishi Prakash Aggarwal, the partner of Man Sarovar Hotel who has deposed that the accused on 27.10.68 to 30.11.68 had paid Rs.97/- and further paid Rs.1,493/- from 21.12.68 to 6.4.70. PW 14 - Fasiruddin Kazi who was Station Master at Elphinstone Road Station in July 1977 and was a Booking Clerk in 1st class Booking Office at Churchgate in August 1977. PW 15 - Talakshi Gala, Manager of the Ration Shop where the accused used to purchase ration. PW 16 - Tikamdas Wadhwani is the husband of the flat owner who gave a flat on leave and licence basis for compensation of Rs.270/- per month in May 1970. PW 17 - Tikamdas Kukreja, partner in M/s. Grand Investment to whom the accused paid Rs.1000/- in the scheme in his daughter’s name and this amount was returned by cheque dated 6.3.81. PW 18 - Arjun Sharma

is the Train Conductor in 1977 who has stated about the issuance of first class ticket. PW 19 - Girijashankar Mishra was a ticket collector at Dadar Western Railway in 1977 deposed of four first class tickets of a train from Amritsar to Bombay. PW 20 - Divakar Pandya who is a Committee Member of Santacruz Gymkhana who has deposed that accused was a member since 1968 where Rs.25/- was the entrance fee and Rs.18/- was a yearly fee. PW 21 - Damji K. Shah was the owner of Ration Shop. PW 22 - Mrs.Rajani Vasudeo Padte was maid at the accused house in 1977 was getting the salary of Rs.20/- per month. PW 23 - Shobha D. Manjrekar who was the Milk delivery maid was paid Rs.3 per month. PW 24 - Sudhir Indradev Shanghari who was a Manager of Diamond Arts where wife of the accused was a partner where she was getting a salary of Rs.1000/- per month and the business was carried on for twelve months only. Prior to that, she was partner in Expo Firm and he has stated that Rs.50/- was received by wife of the accused for designing (cheque). He has further deposed Rs.50 to 60 was taken by the wife of the accused on account everyday. PW 25 Shashi D. Pathak has stated that he was in the

manufacturing business and he used to pay Rs.1001/- per month to Mrs.Abbi, the wife of the accused for designing work. PW 26 - Tirathdas H. Madnani was working as Account Officer on the Textile Committee. PW 27 - Amirruddin Anwaruddin, the Manager of Account Department of State Bank of India at Coimbatore had deposed about the demand draft of Rs.47/- which was issued in the name of the accused by Pandurang, Regional Office, Coimbatore. PW 28 - Shivram Krishnan is the proprietor of Brindavan Lodge, Coimbatore who has proved receipts issued by his elder brother. PW 29 - Krishnawasmi Natarajan, the partner of Krishna Lodge who has identified the handwriting of his partner Mani Iyer in the register maintained by the Lodge. PW 30 - Dr.Mrs.Indira Khemani is the Deputy Medical Superintendent in Lady Medical College and Hospital, New Delhi. PW 31 - Mrs.Aparna S. Joshi was Lady Berth Reservation Clerk, 1st class, Churchgate, Mumbai. PW 32 - Radha B. Manwani also a Lady Berth Reservation Clerk at Churchgate, Mumbai. PW 33 - Jagmohansingh Ikbalsingh Sethi is the Branch Manager of Bank of India, Jallundar. PW 34 - Sureshchandra Lohia is the Handwriting Expert.

PW 35 - Nariman Kapadia was the Head Clerk of the Pay Department in Bombay Dyeing Co. PW 36 - Satish B. Sharma was T.C. in Western Railway. PW 37 - Antore Ramchandran who was Stenographer in Textile Commissioner Office. PW 38 - Hanumant P. Vidwans was a Branch Manager in State Bank of India, Vakola who has deposed about the Saving Bank Account which was in the name of the wife of the accused. PW 39 - Madhukar Masdekar, Deputy Manager, Bank of India who has stated about the account in the name of M/s.Abbey Enterprises. PW 40 - Rustom K. Daroowala was the officer at Juhu Tara Branch, Union Bank of India who has deposed about the account in the name of Diamonds Acts where wife of the accused was a partner. Pw 41 - Shamsundardas Brijbhushandas Das who was Engineer by profession was declared as hostile by the prosecution. PW 42 - Jayesh C. Seth was in charge of the factory of M/s.Aditya International during the period from 1976 to 1977. PW 43 - Dhirendra Jadeja, flat owner in Delhi Lodge Building. PW 44 - Subha N. Pandurangan was a clerk-cum-cashier, Coimbatore. PW 45 - Harshadev Pathak was a C.A. who was examined by the prosecution. PW 46

- Kapildev Mishra who registered FIR to whom permission was granted by the Magistrate to investigate. The defence examined 9 witnesses. The perusal of the list of witnesses clearly indicates that most of the witnesses do not really throw any light in respect of income or expenditure of the accused. It is difficult to understand why the prosecution choose to examine persons like the ticket collector PW 36, Reservation Clerk - PW 31, 32 and other similar witnesses who have merely added to the burden of the voluminous evidence.

8. In my view, it would be relevant to consider first the submission of the learned Counsel appearing on behalf of the appellant regarding the alleged error committed by the trial Court in not relying on the prosecution witnesses who had deposed in favour of the appellant. He has submitted that the trial Court has not taken into consideration in its entirety the evidence of PW 3 - P.Narayanan, PW 26 - T.H. Madnani, PW 25 - Shashi Pathak, PW 41 - Shamsundar Das, PW 17 - Tikamdas Kukreja, PW - 46 Kapildeo Mishra, Investigating Officer. He has also submitted that the trial Court did

not consider and erroneously discarded the evidence deposed by his defence witnesses DW - 1 and DW - 9.

9. PW 3 - P.Narayanan has stated in his evidence that the accused had taken a loan of Rs.2000/- but this amount had not been shown in Exhibit 30. PW 3 - P.Narayanan in his evidence has stated that the monthwise statement of the Pay and other Allowances of the accused from 26.2.65 to 30.4.77 was prepared by Shetty and he identified his handwriting and signature. This statement is exhibited as Exhibit 31. In the cross-examination, he admitted that the accused had taken a loan of Rs.2,000/- but this amount has not been shown or added as income in Exhibit 30. He further admitted in his cross-examination that Exhibit 30 was prepared from a bunch of files numbering 146 out of which only 78 files were available and were personally checked by him. This admission on the part of PW 3 clearly shows that the statement on the basis of which Exhibit 30 was prepared did not contain all the particulars regarding income of the accused. In the cross-examination, PW 3 has admitted that increments in

supplementary bills and D.A. arrears and other arrears had been shown in Exhibit 30 but the corresponding files were not available. This witness also was not in a position to say whether Shetty who prepared the said statement was shown the supplementary bills. The prosecution has not examined Shetty who had prepared the said Exhibit 30. From the admissions which are given by PW 3, firstly there is a clear admission that the statement had not been verified by PW 3 as he has stated that only 78 files out of one 146 files were available and therefore, he had no occasion to check and see whether the said statement is up-to-date or not. The foundation of the prosecution case, therefore, itself is based on the record which is incomplete and is not fullproof. The trial Court does not take into consideration the admission given by these witnesses by merely stating that the accused had not led any evidence regarding the alleged loan in para 28 of its order. Further, the trial Court also does not take into consideration the important admission which have been given by PW 3 which clearly reflect that Exhibit 30 - Statement of Income was not completely checked by these

witnesses in order to ascertain its genuineness. In my view, the reasoning of the trial Court for the purpose of discarding the said amount of Rs.2000/- and also on consideration of the admissions given by PW 3 is clearly erroneous. The learned Counsel appearing on behalf of the appellant thereafter invited my attention to the evidence of PW 26 T.H. Madnani. He has stated in his evidence after he was shown the evidence of PW 3 that he did not agree with the statement of PW 3 and that mere mistakes were committed by Mr.Shetty when he prepared statement Exhibit 30. This further corroborates the defects which were pointed out by PW 3 - P.Narayan in respect of the statement which was prepared by him at Exhibit 30. In my view, this is a very serious lacunae in the prosecution case and this itself demolishes the foundation of the prosecution.

10. PW 6 Indradeva Sanghari who has stated in his evidence that the name of his wife is Suvira Rani and on 24th February 1976 his wife had received a cheque of Rs.5000/- in favour of Abbey Enterprises which was a proprietary firm of which the wife of the accused was

the proprietor. The trial Court discarded this evidence by stating that it was not necessary to consider the evidence at this stage and further by stating that it was not clear from the evidence as to whether this amount was given out of the profits of M/s.Diamond Arts and that this amount could not be out of the profits of M/s.Diamond Arts as the cheque was given in February 1976 while the firm Diamond Arts was constituted in April 1976. In my view, the said observation made by the trial Court is made on the basis of hypothesis and surmises. PW 6 is a prosecution witness. He has given the details regarding the cheques which were given. It is not open for the court to pick and choose certain statements from the evidence of the prosecution witnesses which are in favour of the accused and discard or ignore the statements which support the case of the defence. In my view, even this amount had been wrongly discarded by the trial Court.

11. Similarly, PW 25, PW 41, PW 17 and PW 46 are all prosecution witnesses who have stated to have paid various amounts to the wife of the accused. The trial

Court in some cases has accepted the payment of part of the amounts, however, has not accepted the remaining amount which is alleged to have been paid to the wife of the accused. PW 25 - Shashi Pathak has stated that the total amount of Rs.15,000/- was paid by him to Mrs.Surinder Abbi, wife of the accused towards the charges for preparing a design. He has stated that part of the amount was paid by the cheque and part was paid in cash. The trial Court has taken into consideration only an amount of Rs.8,003/- which was paid by this witness to the wife of the accused. The remaining amount of Rs.6,997/- has been discarded only on the ground that it is not supported by any other document. In my view, the trial court ought not to have dis-believed the witness examined by the prosecution. when in principle it had accepted his statement that the amount was paid for preparing the design. The trial court, therefore, in my view, wrongly discarded an amount of Rs.6,997/-.

12. PW 41 has stated that he had paid an amount of Rs.5,000/- to the wife of the accused as a gift. This

witness was declared hostile and was cross-examined by the Public Prosecutor. The submission of the learned Counsel for the defence, therefore cannot be accepted so far as this witness is concerned. In my view, the trial Court has correctly discarded the testimony of this witness who was declared hostile.

13. PW 17 - Tikamdas Kukreja has stated that he had paid an amount of Rs.1,500/- which the value of consolation prize paid to the Alpana Abbi. The submission of the learned Counsel for the accused on this part also cannot be accepted. The trial Court has correctly not relied on this evidence on the ground that it is very vague. Finally, the learned Counsel for the appellant pointed out that the trial Court had wrongly discarded the evidence of PW 26 who had admitted in his evidence that he had not taken into account these withdrawals while calculating the assets of the firm. PW 26 has admitted in his evidence that the Statement of Account which was shown revealed that approximately a total sum of Rs.20,000/- was drawn by self cheques issued from time to time from the firm in which the wife

of the accused was the partner. The trial Court discarded this evidence only on the ground that mere withdrawal of these cheques could not indicate that the amount had been withdrawn by the wife of the accused. It is true that even if the wife of the accused was a partner of that firm, it cannot be presumed that all the cheques were withdrawn by her. However, at the same time, since the prosecution witness has admitted that there were withdrawals to the tune of Rs.20,000/- from time to time, this benefit ought to have been given to the accused. From the entire judgment and order passed by the trial Court, it can be seen that the trial Court has not adopted a uniform criteria while accepting or rejecting the evidence of the prosecution witnesses. For example, while considering the evidence of PW 24 - Sudhir, this witness has stated that an amount of Rs.5,000/- was paid to Surinder Abbi for the designing work. He has further stated that an amount of Rs.18,000/- was paid to her as Mrs.Surinder Abbi used to take the sum of Rs.50/- to Rs.60/- from account almost every day. The trial court has accepted this evidence by making the following observation :- "PW 24 Sudhir had

stated in his examination-in-chief that a firm continued the business for 12-13 months only. He has given his evidence regarding the amounts collected by the wife of the accused from the firm in his cross-examination. However, I do not see any reason why the evidence should not be accepted." Thus, though the trial Court has accepted the evidence of prosecution witnesses even though they had not produced any documentary evidence, on other occasions as mentioned hereinabove, he has accepted only part of their statement and had discarded part of the statement made by them. The trial Court, therefore, in my view, has clearly erred in not adopted a uniform formula particularly when the evidence had come through the prosecution witness.

14. Thus, if the evidence of PW 3, PW 6, PW 25 and PW 46 has been accepted, an amount of Rs.2,000/-, Rs.5,000/-, Rs.6,997/- and Rs.20,000/- was liable to be deducted. If this amount is calculated, it goes to about Rs.34,000/- which is the amount found in excess with the accused otherwise than his known sources of income. Thus, even if these prosecution witnesses whose

amounts have been discarded are taken into consideration and the entire evidence adduced by the defence is not even considered, the figure arrived at by the trial court would show that there was no excess income which had not been satisfactorily accounted. Taking the totality of fact and circumstances of the case, in my view, the appellant is entitled to be given the benefit of doubt. The appellant, therefore, is acquitted for the offences with which he was charged. The Judgment and Order passed by the trial Court is set aside. The appeal is allowed. The appellant is on bail. His bail bonds stands cancelled.

. The appeal is allowed in the above terms.

(V.M. KANADE, J.)